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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/982,272	10/17/2001	Masahiro Sueyoshi	29288.3300	7784

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EXAMINER	
FLANDERS, ANDREW C	
ART UNIT	**PAPER NUMBER**
2644	

DATE MAILED: 09/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/982,272	SUEYOSHI ET AL.	
	Examiner	Art Unit	
	Andrew C. Flanders	2644	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 August 2005*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-8* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-8* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *17 October 2001* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 11 August 2005 have been fully considered but they are not persuasive.

Applicant alleges:

> "First, Hunter does not take action when there are no bit losses (e.g.. "when the communication section can receive the second data unit in accordance with the communication condition"). In other words, Hunter fails to take action whether or not there are bit losses, only if there are bit losses. Consequently, Hunter fails to teach, advise or suggest 'when the communication section can receive the second data unit in accordance with the communication condition, synthesizing the first data unit and the second data unit so as to generate a synthesis data unit and outputting the synthesis data unit as a second output data unit" as recited in claims 1, 7, and 8 (emphasis added)."

Examiner respectfully disagrees with this allegation. Applicant makes an improper assumption that Hunter not taking action when there are no bit losses encompasses is the only situation Hunter discloses and all situations allowed for within the claim language of "when the communication section can receive the second data unit in accordance with the communication condition. However, this is not the case. Hunter's system repairs the bit losses by replacing packets incorrectly received. Take, for instance the following situation; a user of Hunter's system requests a song in the morning when the weather is not favorable for a good transmission. The system records the song to the system and notifies the user of the poor quality. The user then can wait for a second transmission. If the second transmission occurs in the evening

when the weather is favorable then the system will select the good packets and assemble them to make the final copy; see Hunter col. 5 lines 1 – 25. As shown in the previous rejection, the system receiving the second transmission is in fact "when the communication section can receive the second data unit in accordance with the communication condition" contrary to Applicant's allegation. Thus, even though a situation occurs in which there are no bit losses in the first transmission, this does not encompass every situation. As such the argument is not persuasive and the rejection stands.

Applicant further alleges:

> "Second, Hunter merely replaces an occasional packet of data, but does not synthesize a first packet (the alleged first data unit) and the replacement packet (the alleged second data unit) to generate a synthesis data unit and output the synthesis data unit as a second output data unit. Indeed, there is no synthesis data unit (of the first and replacement packets) in Hunter, because there is no synthesizing. Put another way, instead of synthesizing the first and replacement packets of data to generate a third synthesized data unit, Hunter replaces the missing data packet (but with no synthesis of the two data packets)."

Examiner respectfully disagrees with this allegation. Applicant is reading the limitation of the first data unit incorrectly. As stated in the previous rejection, the first data unit is a requested download stored on a storage medium. The entire song, not just a single packet is read upon the limitation of the first data unit, contrary to Applicant's assumption. The second data unit's are the packets. Combining the saved song (the first data unit) with the second downloaded packets (the second data unit) is

in fact creating a synthesis data unit output as a second output data unit. As such the arguments are not persuasive and the rejection stands.

Applicant further alleges:

> "To the extent applicable, Hunter also fails to teach, advise or suggest "the first data unit and the second data unit originates from a common hierarchy-encoded data unit as recited in new claim 8."

Examiner respectfully disagrees. The downloaded and stored song (first data unit) and the replacement packets (second data unit) would have to originate from the same song stored at the remote location. If they were not, when repairing the bit losses, the songs would not playback correctly after repair.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 - 8 are rejected under 35 U.S.C. 102(e) as being anticipated by Hunter (U.S. Patent 6,647,417).

Regarding **Claim 1**, Hunter discloses a reproduction apparatus comprising:

a read section for reading a first data unit from a recording medium having the first data unit recorded thereon (i.e. storing a requested download on a storage medium col. 15 lines 5 – 17);

a communication section for receiving a second data unit in accordance with a communication condition with a server (i.e. receiving a copy of a packet via a satellite communication (col. 14 lines 66 – 67 and col. 15 lines 1 – 5);

a synthesis section for, when the communication cannot receive the second data unit in accordance with the communication condition (i.e. during a rainstorm or satellite interruption col. 15 lines 1 – 5) outputting the first data as a first output data unit (i.e. a customer is informed of the quality of download and the customer may choose to preview the corrupted version or even burn it to a CD col. 15 lines 18 – 24);

when the communication section can receive the second data unit in accordance with the communication unit (i.e. it is inherent that when there is no rainstorm or satellite interruption the communication section is available col. 15 lines 1 – 5) synthesizing the first data unit and the second data unit so as to generate a synthesis data unit and outputting the synthesis data unit as a second output data unit (i.e. repairing data loss might be accomplished by replacing an occasional packet by the receiver asking for a copy of the packet via a satellite col. 14 lines 66 – 67 and col. 15 lines 1 – 5)

a reproduction section for reproducing the first output data unit and the second output data unit (i.e. the customer can burn a CD of the imperfect quality, or burn a CD of the fixed version after the second transmission col. 15 lines 10 – 17);

wherein the first data unit and the second data unit are constructed so that a sound quality of a reproduction of the second output data unit is higher than a sound quality of reproduction of the first output data unit (i.e. informing the customer of the imperfect first transmission and waiting for a second transmission to sort part of the second transmission and then selecting good packets of bits to make up the final copy).

Regarding **Claim 2**, in addition to the elements stated above regarding claim 1, Hunter further discloses:

wherein the read section reads, from the recording medium, an access data unit for requesting the server fro transmission of the second data unit (i.e. checking the stored data for missing data, informing the customer the download was imperfect and requesting a second transmission for receiving the rest of the data col. 15 lines 5 – 17).

Regarding **Claim 3**, in addition to the elements stated above regarding claim 1, Hunter further discloses:

the first data unit, the second data unit, and the access data unit correspond to a common music program which is common to the first data unit and the second data unit (i.e. storing a requested download (the common music program) on a storage medium col. 15 lines 5 – 17, receiving a copy of a corrected packet of the requested download

(the common music program) via a satellite communication (col. 14 lines 66 – 67 and col. 15 lines 1 – 5 and checking for missing data of the requested download (the common music program), informing the customer the requested download (the common music program) was imperfect and allowing the customer to wait for a second transmission for receiving the rest of the data col. 15 lines 10 – 17); and

the access data unit includes inherent information representing attribute information of the common music program (i.e. the system detects bit losses and informs the user that the download was imperfect col. 15 lines 5 – 15).

Regarding **Claim 4**, in addition to the elements stated above regarding claim 3, Hunter further discloses:

the recording medium has a plurality of first data units respectively corresponding to a plurality of music programs (i.e. Hunter discloses various modes in which a user selects multiple files, orders them and then they are downloaded to the storage device, Fig. 2 steps 1, 2 and 3);

the reproduction apparatus further includes a selection section for displaying for displaying the inherent information of the access data unit corresponding to each of the plurality of music programs (i.e. the system detects bit losses and informs the user that the download was imperfect and allows the user to choose to preview, record the CD or request a 2nd transmission col. 15 lines 5 – 15);

and receiving an input for designating the music program based on the inherent information displayed (i.e. the system informs the user that the download was imperfect

and allows the user to choose to preview, record the CD or request a 2nd transmission col. 15 lines 5 – 15).

Regarding **Claim 5**, in addition to the elements stated above regarding claim 1, Hunter further discloses:

the recording medium has at least a portion of the second data unit recorded thereon (i.e. the first download stored to the hard drive includes packets with lost bits col. 14 lines 56 – 65);

the read section reads at least a portion of the first data unit and the at least a portion of the second data unit from the recording medium in at least a portion of a reproduction time period (i.e. the user may choose to preview the corrupted file col. 15 lines 5 – 17, it is inherent that as this corrupted file is previewed that the corrupted packets (second data unit) will be played along with the non-corrupted packets (first data unit)); and

the synthesis section synthesizes the at least a portion of the first data unit and the at least a portion of the second data unit in the at least a portion of the reproduction time period regardless of the communication condition with the server (i.e. the user may choose to preview the corrupted file col. 15 lines 5 – 17, it is inherent that as this corrupted file is played back, the data units (packets) of the first (uncorrupted packets) and second (corrupted packet) are synthesized together and played in order).

Regarding **Claim 6**, in addition to the elements stated above regarding claim 1, Hunter further discloses:

wherein the first data unit is divided into a plurality of blocks along a time axis (i.e. the file is sent in packets col. 14 lines 55 – 65, it is inherent that when this data is reproduced or burned to a CD the packets will be placed in order according to time, if they were not, the music file would playback out of order and not sound correct);

the second data unit is divided into a plurality of bocks respectively corresponding to the plurality of blocks of the first data unit (i.e. when the first data unit is repaired, it is done so with packets that replace the occasional corrupted packet col. 14 lines 65 – 67 and col. 15 lines 1 – 5); and

the synthesis section sequentially synthesizes the first data unit and the second data unit on a block-by-block basis (i.e. the corrupted packets in the first data unit are filled with corrected second data unit packets col. 14 lines 65 – 67 and col. 15 lines 1 – 5).

Regarding **Claim 7**, Hunter discloses:

a reproduction system (i.e. a household receiver, Fig. 6);

a server for providing information to the reproduction apparatus (a content provider, master music library, and satellite uplink, Fig. 6);

wherein the reproduction apparatus includes:

a read section for reading a first data unit from a recording medium having the first data unit recorded thereon (i.e. storing a requested download on a storage medium col. 15 lines 5 – 17);

a communication section for receiving a second data unit in accordance with a communication condition with a server (i.e. receiving a copy of a packet via a satellite communication (col. 14 lines 66 – 67 and col. 15 lines 1 – 5);

a synthesis section for, when the communication cannot receive the second data unit in accordance with the communication condition (i.e. during a rainstorm or satellite interruption col. 15 lines 1 – 5) outputting the first data as a first output data unit (i.e. a customer is informed of the quality of download and the customer may choose to preview the corrupted version or even burn it to a CD col. 15 lines 18 – 24);

when the communication section can receive the second data unit in accordance with the communication unit (i.e. it is inherent that when there is no rainstorm or satellite interruption the communication section is available col. 15 lines 1 – 5) synthesizing the first data unit and the second data unit so as to generate a synthesis data unit and outputting the synthesis data unit as a second output data unit (i.e. repairing data loss might be accomplished by replacing an occasional packet by the receiver asking for a copy of the packet via a satellite col. 14 lines 66 – 67 and col. 15 lines 1 – 5);

a reproduction section for reproducing the first output data unit and the second output data unit (i.e. the customer can burn a CD of the imperfect quality, or burn a CD of the fixed version after the second transmission col. 15 lines 10 – 17);

wherein the server includes:

a storage section for storing the second data unit (i.e. a master music library Fig. 6);

a second communication section for sending the second data unit to the reproduction apparatus (a satellite uplink Fig. 6); and

wherein the first data unit and the second data unit are constructed so that a sound quality of a reproduction of the second output data unit is higher than a sound quality of reproduction of the first output data unit (i.e. informing the customer of the imperfect first transmission and waiting for a second transmission to sort part of the second transmission and then selecting good packets of bits to make up the final copy).

Regarding **Claim 8**, in addition to the elements stated above regarding claim 1, Hunter further discloses:

the first data unit and the second data unit originates from a common hierarchy-encoded data unit (it is inherent that the downloaded and stored song (first data unit) and the replacement packets (second data unit) would have to originate from the same song stored at the remote location. If they were not, when repairing the bit losses, the songs would not playback correctly after repair).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew C. Flanders whose telephone number is (571) 272-7516. The examiner can normally be reached on M-F 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vivian Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

acf

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